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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>STATE OF ARIZONA (Plaintiff)</p> <p>vs.</p> <p>STEVEN CARROLL DEMOCKER (Defendant)</p>	<p>Case No. P1300CR20081339</p> <p>ORDER re: <i>Chronis</i> Hearing: Probable Cause For Aggravating Factors</p>	<p>FILED</p> <p>DATE: DEC 09 2009 ✓</p> <p>9 O'Clock A M.</p> <p>JEANNE HICKS, CLERK</p> <p>BY: <u>ber L. Harcey</u> Deputy</p>
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<p>HONORABLE Thomas B. Lindberg</p> <p>DIVISION SIX</p>	<p>BY: Robin Gearhart / Judicial Assistant Division Six</p> <p>DATE: December 8, 2009</p>
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On November 20, 2009, the Court concluded evidentiary and argument portions of the Probable Cause Hearing regarding the allegations of aggravating circumstances, pursuant to *Chronis v. Steinle*, 220 Ariz. 559, 208 P.3d 210 (2009) (which held that A.R.Crim.P. Rule 13.5(c) allows a defendant in a capital case to request a probable cause determination for alleged aggravating circumstances; and such determinations are to be made following the procedure in A.R.Crim.P. Rule 5, under which the State bears the burden of proof). Arguments were presented by the respective counsel for the State and Defendant. The matter was then taken under advisement.

Listed in order of the subsection pertaining to the respective alleged aggravating factor, the State alleged five alternative aggravating factors under A.R.S. Section 13-703, (as it existed at the time of the alleged offense): (F)(2): defendant was previously convicted of a serious offense (here, allegedly first degree burglary); (F)(5): defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; (F)(6): defendant committed the offense in an especially heinous, cruel or depraved manner; (F)(12): defendant committed the offense to prevent a person's cooperation with an official law enforcement investigation, to prevent a person's testimony in a court proceeding, in retaliation for a person's cooperation with an official law enforcement investigation or in retaliation for a person's testimony in a court proceeding; (F)(13): offense was committed in a cold, calculated manner without pretense of moral or legal justification.

A *Chronis* hearing is intended to determine the issue of probable cause for aggravating circumstances underlying the notice that the State is seeking the death penalty. In the same fashion that a preliminary hearing is only to determine whether probable cause to hold a person on charges which ultimately are submitted at a trial where proof of guilt by the State must be beyond a reasonable doubt, this probable cause determination for aggravating factors is not a determination

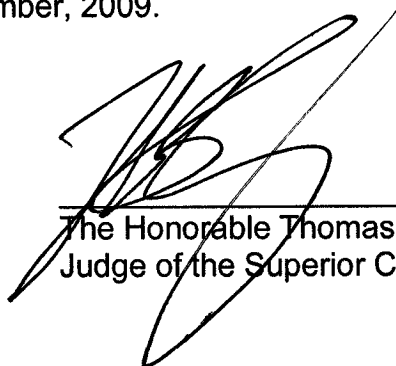
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that the State will ultimately be successful in its proof of aggravating circumstances or that the death penalty will be imposed.

Arizona courts define "probable cause" as "such a state of facts as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain a strong suspicion of guilt." *State v. Emery*, 131 Ariz. 493, 506, 642 P.2d 838, 851 (1982) Or, phrased a little differently, probable cause is "a reasonable ground of suspicion, supported by circumstances sufficient to warrant an ordinarily prudent man in believing" that the accused is guilty, *Hockett v. City of Tucson*, 139 Ariz. 317, 320, 678 P.2d 502, 506 (App., 1983). As applied in the *Chronis* context, the state of facts must be such as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain a strong suspicion that the respective aggravating circumstance exists based on the evidence presented. At this stage, proof beyond a reasonable doubt of aggravating factors is not determined. Nor in a *Chronis* hearing is the Court determining whether the respective aggravating factor's constitutionality would ultimately be upheld.

**IT IS ORDERED** that, based on the evidence presented, and the arguments made, the Court finds probable cause exists for aggravating factors under A.R.S. Section 13-703(F)(2), (F)5, and (F)(6) and the State may go forward on those aggravating circumstances; the Court does not find probable cause to support aggravating factors under A.R.S. Section 13-703(F)(12) or (F)(13), and those allegations are stricken and dismissed.

**DATED** this 8 day of December, 2009.

  
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The Honorable Thomas B. Lindberg  
Judge of the Superior Court / Division 6

cc: Joseph C. Butner III, Esq., Office of the Yavapai County Attorney (**via facsimile this date to 928-771-3110**)  
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Victim Services: **Attn. Marie Martinez**